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KARL MORELL

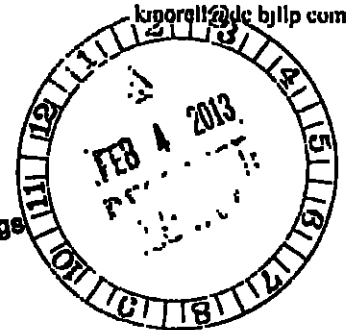
February 4, 2013

Ms Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

FEB 4 - 2013

Part of  
Public Record



Re: Docket No AB-1108X- Discontinuance Exemption – In Rusk  
County, Texas

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for Exemption under 49 C F R. 1152.60. Also attached is a check covering the \$6,500 filing fee.

Please time and date stamp the extra copy of the Petition for Exemption and return it with our messenger

If you have any questions, please call me

Sincerely,

Karl Morell

**FILED**

Enclosures

FEB 4 - 2013

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

FEB 4 - 2013

**SURFACE  
TRANSPORTATION BOARD**

Portland, Oregon

Bend, Oregon

Seattle, Washington

Washington, DC

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1108X

BLACKLANDS RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN RUSK COUNTY, TEXAS

PETITION FOR EXEMPTION



**FILED**  
FEB 4 - 2012  
SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**  
FEB 4 - 2013  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

FEB 4 - 2013

Part of  
Public Record

Karl Morell  
Of Counsel  
Ball Janik LLP  
655 Fifteenth Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
Blacklands Railroad, Inc.

Dated: February 4, 2013

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1108X

BLACKLANDS RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN RUSK COUNTY, TEXAS

PETITION FOR EXEMPTION



Blacklands Railroad, Inc. ("BLR") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BLR's discontinuance of lease operations over a 0.9-mile rail line located in Rusk County, Texas.

**PROPOSED TRANSACTION**

BLR proposes to discontinue its lease operations over the rail line located between milepost 15.2 and milepost 16.1 at Henderson in Rusk County, Texas (the "Line").<sup>1</sup> The Line traverses U.S. Postal Service Zip Code 75652 and is owned by Rusk County Rail District ("RCRRD").<sup>2</sup> A map of the Line is attached as Exhibit A.

<sup>1</sup> BLR obtained authority to lease and operate the Line in STB Finance Docket No. 35327, *Blacklands Railroad, Inc. – Lease and Operation Exemption – Rusk County Rural Rail District* (not printed), served December 11, 2009.

<sup>2</sup> RCRRD is seeking to abandon the Line in Docket No. AB-1103X.

Based on information in BLR's possession, the Line does not contain any federally granted right-of-way. Any documentation in BLR's possession will be made available to those requesting it. There are no stations on the Line

#### **STATEMENT OF FACTS**

There has been no local traffic on the Line since August 2011, and there no longer are any actual or potential shippers located along the Line. The last customer served by BLR along the line was a transloader of frac sand which has relocated its transloading facilities to another site. Also, the Line is stub-ended and, therefore, not capable of handling overhead traffic. BLR is seeking to discontinue its operations over the Line because there no longer is any need for rail service on the Line and the City of Henderson seeks to purchase the corridor for a road construction project

#### **EXEMPTION REQUESTED**

BLR seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order for BLR to discontinue its lease operations over the Line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101, and
- (2) either:
  - (a) the transaction is of limited scope; or
  - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96<sup>th</sup> Cong. 2d Sess 105 (1980). See also Exemption From Regulation – Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v United States, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 168-69 (1995).

**A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy**

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W Ry. Co – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not

printed), served September 17, 1997 ("*Georgia Central*"). By discontinuing its operations over the Line, BLR will be able to avoid the maintenance costs associated with retaining this dormant Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997. Other aspects of the rail transportation policy are not affected adversely. For example, competition is not affected since there are no active shippers on the Line and no need for rail service along the Line.

**B. This Transaction Is Of Limited Scope**

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993

The proposed transaction is clearly of limited scope. BLR is seeking to discontinue operations over a 0.9-mile rail line that traverses through downtown Henderson and has had no demand for rail service in the last 18 months. The shortness of the Line, the limited geographic area involved, and the lack of use all demonstrate the limited scope of the proposed discontinuance. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company*

– *Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

**C. This Transaction Will Not Result In An Abuse of Market Power**

There has been no freight traffic on the Line in 18 months. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.*, STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999, STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

**ENVIRONMENTAL AND HISTORIC REPORTS**

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(6) and from historic reporting requirements under 49 C.F.R. § 1105.8(b)(3). *See* STB Docket No. AB-156 (Sub-No. 25X), *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights – In Susquehanna County, Pa and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY* (not printed), served January 19, 2005.

Alternatively, BLR adopts the environmental and historic reports filed by RCRRD in Docket No. AB-1103X.

**FEDERAL REGISTER NOTICE**

A draft Federal Register notice is attached to this Petition as Exhibit B.

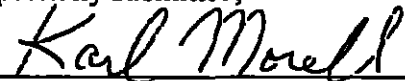
**LABOR PROTECTION**

The interests of railroad employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protection conditions in *Oregon Short Line R. Co – Abandonment – Goshen*, 360 I C.C. 91 (1979).

#### CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this discontinuance is of limited scope. Accordingly, BLR respectfully urges the Board to grant the discontinuance

Respectfully submitted,



Karl Morell  
Of Counsel  
Ball Janik LLP  
655 Fifteenth Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for: BLACKLANDS RAILROAD,  
INC.

Dated. February 4, 2013





**EXHIBIT B**

**SURFACE TRANSPORTATION BOARD**

**DOCKET NO AB-1108X**

**BLACKLANDS RAILROAD, INC.  
--DISCONTINUANCE EXEMPTION--  
IN RUSK COUNTY, TEXAS**

On February 4, 2013, Blacklands Railroad, Inc. (BLR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BLR to discontinue its operations over a line of railroad located between railroad milepost 15.2, and railroad milepost 16.1, at Henderson, Texas, which traverses U.S. Postal Service Zip Code 75652, a distance of 0.9 miles in Rusk County, Texas. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I C C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by May \_\_, 2013).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105 8(b)(3).

Any offer of financial assistance for subsidy under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB-1108X and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before \_\_\_\_\_, 2012.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305 [TDD for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV "

Decided: \_\_\_\_\_ 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

## EXHIBIT C

### CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-1108X was mailed via first class mail on February 4, 2013, to the following parties:

<b>State Public Service Commission</b>  Railroad Commission of Texas P.O. Box 12967 Austin, TX 78711-2967  <b>Military Traffic Management Command</b>  Military Surface Deployment & Distribution Command ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225-5006	<b>National Park Service</b>  Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001  Intermountain Region 12795 Alameda Parkway Denver, CO 80225  <b>U.S. Department of Agriculture</b> U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14 <sup>th</sup> Street SW Washington, DC 20250
--	--

Dated: February 4, 2013

  
Karl Morell

### **CERTIFICATE OF PUBLICATION**

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-1108X was published on February 3, 2013, in the Henderson Daily News, a newspaper of general circulation in Rusk County, Texas as required by 49 C.F.R. § 1105.12.

Dated: February 4, 2013

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in dark ink and is positioned above a horizontal line.

Karl Morell